IN THE HIGH COURT OF UTTARANCHAL IN NAINITAL

Appeal From Order No.519 of 2004

Smt. Tahira Khatoon W/o Late Rahil Ahmad
@Ruhel Ahmad, R/o at present Moh. Alli Khan,
Kashipur, District U.S. Nagar

...Appellants

Vs

1. Balvinder Singh S/o Sri Santok Singh,
   R/o Moh. Bhawani Ganj, Ramnagar, Distt. Nainital
2. National Insurance Co. Ltd., through Divisional Manager, Div. Office Haldwani (Nainital)
3. Smt. Gudmala Jain W/o Sri Balesh Chandra Jain,
   (Jain Travellers Jaspur Bus Stand) Kashipur, District Udham Singh Nagar
4. The Oriental Insurance Co. Ltd., Branch Kashipur,
   through Divisional Manager, Haldwani, Distt. Nainital

...Respondents

Dated: July 4, 2006

Sri Dharamveer, Sr. Advocate assisted by Mr. B.S. Parihar, learned counsel for the appellants Sri B.C. Pandey and Sri T.A. Khan, Advocates, learned counsel for the respondents

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant against the judgment and award dated 14.06.2002 passed by Motor Accident Claims Tribunal/ Addl. District Judge/FTC Kashipur ***(hereinafter will be referred to as the Tribunal)*** in MACT Case No.175 of 2000, for enhancement of compensation whereby the learned District Judge has awarded a sum of Rs.1,90,000/- as compensation in favour of the claimant/appellant.

2. Brief facts of the case giving rise to the present appeal are that the deceased Rahil Ahmad @ Ruhel was traveling in Bus No.URN-9058 on 7.7.2000 and at 5:00 p.m., when the said bus was standing at Sahaywala Tiraha, Kasba Sherkot, District Bijnaur, a Truck bearing No.UP-25/7112 dashed into the said bus from

backside due to which the deceased sustained grievous injuries and subsequently he deceased died at Lokpriya Hospital, Meerut on 1.8.2002 during the treatment. The first information report of the said incident was lodged at P.S. Sherkot, Distt. Bijnaur by the conductor of the said bus and the death certificate of the deceased was given by Lokpriya Hospital, Meerut. It was alleged that the sons and daughters of the deceased were studying in difference schools and there is no other source of income of the claimant after the death of the deceased. It was also alleged that the claimants have received financial and mental shock due to the said accident. The claimants who are legal heirs and dependents of the deceased filed claim petition for compensation against the opposite parties.

3. The opposite parties contested the claim petition before the Tribunal. The Opp.party No.1 filed his written statement and submitted that on 7.7.2000, while he was driving the Truck from Dhampur to Afjalgarh, the conductor of the truck was also sitting with him and as soon as the said Truck reached near Kasba Sherkot at Ram Sahay crossroad, a Bus No.URN-9058 which was standing on the wrong side of the road which he tried to overtake in a very cautious manner and because of another vehicle which came from other side and due to the standing of the bus on the wrong side, the Truck collided with the back part of the bus as a result of which the conductor of the Truck Sanjeev Kumar received injuries and some passengers of the bus got injured. It was alleged that there is no fault of him, the accident was a co-incident and the accident had occurred on account of the mistake on the part of the driver of the Bus and the Opp. Party Nos.3 and 4 are liable to pay the compensation. It was also alleged, that even so if the

liability of the Opp. No.1 is occurred, the liability is of National Insurance Co. because the Truck was insured with the said insurance company. The opp. Party was having the valid driving licence and the truck was having all the valid documents at the time of accident. It was also alleged that the claimants have prayed for exorbitant amount, hence the claim petition of the petitioner deserves to be dismissed.

4. The Opp. No2 – National Insurance Company also filed its written statement and refuted all the contents of the claim petition on the ground of lack of information and it was submitted that the amount which has been sought by the claimant is exorbitant and there is no scientific justification for the same. It was alleged that the condition of Section 64(v)(b) of Insurance Act is to be satisfied even when the vehicle is insured. The occurrence, date, time and place of the accident of the vehicle in question was refuted and it was alleged that the way in which the incident has said to be occurred, is wrong and the insurance company is not liable to pay any compensation. The vehicle in question which was having relevant documents at the time of accident, is necessary to be proved and the insurance and insurance policy is also to be proved because the liability to pay the compensation cannot be transferred on the insurance company automatically. Hence, it was prayed that the claim petition of the petitioner was not maintainable and was liable to be dismissed.

5. The Opp. No.3 also filed its written statement and refuted all the contents of the claim petition and submitted that the husband of the applicant Rahil Ahmad (deceased) was neither traveling in Bus No.URN-9058 on 7.7.2000, nor any accident had occurred on

7.7.2000 at 5:00 P.M. due to the negligent driving of the driver of the said Bus. It was alleged that even on 7.7.2000 and before that date, all the papers of the Bus No.URN-9058 were valid and hence the insurance company is not liable to pay any compensation. It was also alleged that the claimants have prayed for exorbitant amount, hence the claim petition of the petitioner deserves to be dismissed.

6. The Opp. No.4 – Oriental Insurance Co. also filed it written statement and refuted all the contents of the claim petition and submitted that the amount prayed by the claimants is exorbitant and is not liable to be accepted. The fact that the deceased had died on account of this incident is wrong. It was also stated that the driver of Truck No.UP.25/7112 and the driver of other vehicle which was involved in the accident was not being made party, hence it was claimed that the claim was bad on account of non-joinder of the said parties and is liable to be dismissed. It was also alleged that the driver of Vehicle No.UP25/7112 was not having valid licence and valid permit, hence the insurance company is not liable to pay any compensation. It was also stated that a forge and fake application was produced hence the claim petition is liable to be dismissed and the insurance company is not liable to pay any compensation.

7. The Tribunal on the basis of the written statements/objections filed by both the parties framed as many as four issues which are as under: -

1. *Whether on 7.7.2000 at 5:30 P.M. at main road Afjalgarh-Dhampur village Sahaiwala crossroad, Kasba Sherkot, Distt. Bijnaur, a Truck bearing No.UP25/7112 while driving rashly and negligently collided with Bus No.URN-9058 due to*

which the passenger sitting in the bus namely Rahil alias Ruhel died?

2. *Whether the Bus No.URN-9058 which was already standing at the spot, had also some contribution in the accident, if so then to which extent?*

3. *Whether Truck No.UP.25-7112 was having any valid and effective driving licence at the time of accident, if so then its effect?*

4. *To what extent that claimants were entitled for compensation and from which opposite party?*

8. After dealing with all issues, the Tribunal awarded a sum of Rs.1,90,000/- to the claimant/appellants by the impugned award. Feeling aggrieved, the appellants have come up in this appeal.

9. We have heard learned counsel for the parties and perused the entire evidence available on record.

10. Learned counsel for the appellant submitted that the Tribunal has erred by assessing the income of the deceased to be Rs.15,000/- per year. He also submitted that the deceased was also having business and he was earning Rs.4,000-5,000/- per month from business and the Tribunal has erred by giving the finding that the deceased was not doing any business.

11. The wife of the deceased Smt. Tahira Khatoon appeared before the Tribunal and got cross-examined herself as P.W.1, and stated in its statement that her husband was 40 years of age and he was doing the business of *Parchooni* and was earning Rs.4,000-5,000/- per month and the expenditure of herself and her son was bear by the said income and there was no other source of income. The Tribunal while deciding this issue as Issue No.4 has recorded a finding that as per the

statement of the wife, the deceased was doing the work of daily needs items, however no documentary proof was filed by her in support of her case. The Tribunal has rightly recorded the finding that when he was doing the business of daily needs, there must be some document. The Tribunal has also recorded the finding that when the deceased was told about 40 years of age, then there must be some proof that he was doing any business but no document was filed which could establish that the deceased was working in the shop of daily needs (*Parchoon*) and he was earning Rs.4,000-5,000/- per month. The Tribunal has also recorded a finding that there was no other proof in support of her case. The report of insurance expert was submitted as Paper No.65-Ga, in which the statement of Smt. Tahira Khatoon was also recorded in which she submitted that her husband was doing clothing business. Hence, the Tribunal recorded a finding that there was uncertainty about the work of the deceased, hence the Tribunal disbelieved the statement of the wife that the deceased was carrying business and was earning Rs.4,00-5,000/- per month. The wife of the deceased submitted that the deceased was 40 years of age at the time of the accident, however in her application, she shown her age to be 37 years and to be mother of 7 children and when her statement was taken on 2.3.2001, she told her age 35 years. However, in the year 2000, when he submitted her application she was 37 years of age and in the year 2002, she must be 39 years of age, however she told her age to be 35 years so that it could be said that her husband was 40 years of age at the time of accident and there is no other documentary proof, hence the Tribunal rightly held that the deceased must be 45-50 years of age. The Tribunal has also rightly recorded the finding that there was no proof of the business of the deceased and what he

was earning, this was also could not be ascertained. Hence, the Tribunal held the annual income of the deceased to be Rs.15,000/- i.e. notional income and after deducting 1/3rd towards personal expenses, it came out to be Rs.10,000/- annually. The Tribunal in its judgment in this regard has recorded a finding that deceased was 45-50 years of age and the dependents of the deceased were her wife and her 7 children and out of them 2 children have become adults and others five were still minors, therefore, in that situation, the Tribunal has rightly held that the multiplier of 13 would be appropriate. The wife of the deceased also submitted that after the accident, the deceased was taken to hospital where after 3-4 days he was died and it was submitted that a sum of Rs.2-3 lacs were spent during the treatment, however the Tribunal has recorded a finding in this regard that there was no documentary proof. The Tribunal after considering the entire facts of the case awarded a sum of Rs.53,000/- towards medical treatment, The Tribunal also awarded Rs.2,000/- towards funeral expenses and a sum of Rs.5,000/- on account of end of married life was also awarded. Therefore, in total a sum of Rs.1,90,000/- was awarded to the claimant/appellant alongwith 9% interest per annum from Opp. Party Nos.2 and 4.

12. In view of the above, we find nothing to disagree with the findings recorded by the Tribunal regarding determination of compensation. The claimant has utterly failed to prove any evidence of income before the Tribunal, hence the Tribunal rightly awarded the compensation on notional income. In absence of any document as evidence of income, we are also of the view that it is not a fit case for enhancement of compensation. We find that the amount of compensation as awarded is

just and proper and we do not find any infirmity or illegality in the judgment impugned.

13. No other point has been pressed.

14. In the result, the appeal is devoid of merit and is accordingly dismissed. The impugned judgment and order under appeal is upheld. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang